vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3263 OF 2004

New India Insurance Company Ltd.
having its registered office at
87, M.G. Road, Mumbai - 400 023 ... Petitioner

V/s.

Smt.Satyavati Ramprasad Ruia
residing at Essar Corporation
9th floor, Maker Chamber
Nariman Point, Mumbai - 21 ... Respondent

Mr.V.A. Thorat with Mr.P.G. Lad for Petitioner
Mr.Y.S. Jahagirdar with Mr.Arumugam for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATE: **OCTOBER 06, 2005**

P.C.:

. This Petition is directed against an order passed in an interim notice taken out by the Respondent before the trial Court. The trial Court directed the Petitioner either to pay to the respondent or to deposit in Court the contractual agreed basic rent as per clause 3 of the agreement dated 14.5.1984 from 1.8.1992 till 31.3.2000. Various further stipulations had been made by the trial Court in its impugned order of 20.12.2003.

2. The dispute in the writ petition is whether in a

standard rent application filed by a tenant the landlord can seek deposit of the contractual rent although no notice of demand as contemplated under section 12(2) of the Bombay Rent Act has been issued, nor has any suit been filed by the landlord for recovery of rent with or without possession. The facts giving rise to the present petition are as follows:

The Petitioner had obtained the suit premises on a monthly lease from the respondent on 14.5.1984. The respondent had borrowed a loan from the Petitioner and the parties agreed that the loan amount would be repaid by debiting a specified amount from the loan account towards the monthly rent payable in respect of the suit premises. It was agreed that an amount of Rs.2,52,200/- would be paid as monthly rent for the first five years and Rs.3,02,640/- for the subsequent period. In the agreement of 14.5.1984, there were various other stipulations regarding security deposit and the other amount payable by the Petitioner to the Respondent. On 12.10.1987 the respondent called upon the Petitioner to reimburse the society bills and other charges in accordance with the agreement between them. It appears that the Petitioner did not reimburse these amounts but filed an application for fixation of standard rent under section 11 of the Bombay Rent Act in 1989. This

application was numbered as RAN application No.79/SR of 1989. The petitioner claimed in that application that the standard rent should be fixed at Rs.10,536/- per month. The respondent opposed the application of the Petitioner and contended that the amount of Rs.10,536/- was too low. An interim application was moved by the Petitioner for fixation of interim rent. This application was dismissed by the trial Court on 1.7.1995 on the ground that there was no demand for rent from the respondent nor was there any notice under section 12(2) of the Bombay Rent Act. In the year 1998, the Petitioner moved another application for fixation of interim rent on the basis of the debit note issued by the respondent. This application also was dismissed for the same reason as the earlier one. In the year 2003, the respondent moved an interim application bearing No.4715 of 2003 for a direction against the Petitioner to deposit the amount payable under the debit note or the contractual amount payable under the agreement dated 14.5.1984. The Petitioner resisted this application by contending that it was not maintainable since there was no notice issued under section 12(2) of the Bombay Rent Act and that the trial Court had already held that debit notes could not be considered to be demands for rent. On 20.12.2003, the trial Court passed the impugned order. The trial Court was of the view that although

there was no demand under section 12(2) nor could the debit notes be considered as demands for rent, the application filed by the respondent was maintainable under section 151 r/w section 94 and Order 39 Rule 10 of the Code of Civil Procedure. It is this order which is impugned in the present petition.

3. Mr.Thorat, learned Counsel for the Petitioner, contends that the order passed by the trial Court directing the Petitioner to deposit an amount during the pendency of the standard rent application is without jurisdiction. He submits that there being no suit for recovery of rent with or without possession such an application cannot be granted. According to the learned Counsel, once the trial Court had found that the debit notes could not constitute demands for rent, the application filed by the respondent for deposit of rent was not maintainable. The learned Counsel also submits that the possession of the premises was sought to be handed over by the Petitioner. However, the respondent has refused to take possession of the same for various reasons. Furthermore, he contends that the standard rent application itself needs to be decided.

4. Mr.Jahagirdar, learned Counsel for the Respondent, submits that the stand of the Petitioner is

dishonest since the Petitioner had not paid any rent whatsoever from 1989 onwards. According to him, the Petitioner cannot be allowed to continue in possession of the premises without payment of any rent, whether contractual rent or standard rent. According to the learned Counsel, the respondent has been greatly prejudiced by the attitude and conduct of the Petitioner since she is required to pay the society charges and other outgoings without recovering any rent for the suit premises. He submits that when neither section 11(3) nor section 11(4) are available to the respondent, the Court can always consider the application made by the respondent for deposit of rent under section 151 of the Code. The powers of the Court under section 151 r/w 94 and Order 39, Rule 10 of the Code are wide enough to secure payment or deposit of rent pending the fixation of standard rent. He urges that the jurisdiction of this Court under Article 227 being an equitable jurisdiction, this Court should not interfere with the directions of the trial Court when admittedly the Petitioner has continued to remain in occupation of the suit premises without paying any amount towards rent from 1989 onwards.

5. The submission of the learned Counsel for the Respondent though appealing, is not sustainable in law.

The standard rent application filed by the tenant under section 11(1) of the Bombay Rent Act requires the Court to determine the standard rent. The filing of an application for standard rent under section 11(1) itself amounts to a dispute being raised between the landlord and tenant with respect to the rent payable. However, there is no provision under which the tenant can be compelled in an application filed by him under section 11(1) to deposit or pay rent by way of an interim measure. It is only if a standard rent application is filed under section 11(3) or 11(4) that the Court can determine the reasonable amount which it deems fit should be paid as an interim arrangement towards rent. However, for determining this amount, there are certain pre-requisites. Under section 11(3), the pre-condition for fixing an amount is receipt of a notice by the tenant from the landlord under section 12(2) of the Act. Once such a notice is issued to the tenant, the tenant can prefer an application under section 11 and under section 11(3), the Court can always direct payment of an interim amount towards rent. If the tenant fails to either pay or deposit such amount specified by the Court, the standard rent application filed by the tenant is liable to be dismissed. This interim rent may be fixed without there being a suit filed for recovery of rent with or without possession. Once a notice under

section 12(2) is received by the tenant from the landlord, an application can be preferred by him for fixation of standard rent and the Court may direct payment or deposit of an interim amount towards rent or permitted increases.

6. The contingency stipulated under section 11(4) is that when a suit for recovery of rent with or without a claim for possession of the premises has been instituted by the landlord an application for standard rent can be preferred by the tenant. The Court can then fix the amount which it deems fit which must be paid to the landlord or deposited in Court. This interim standard rent fixed by the Court must be paid during the pendency of the suit. Failure to comply with such an order may disentitle the tenant from defending the suit.

7. Therefore, considering the scope of section 11 in my view, it is obvious that an application under section 11(1) filed by a tenant must be decided in its entirety. There is no provision for fixation of an interim standard rent either on application made by a tenant or the landlord.

8. The scope of subsections (1) and (3) of Section

11 are totally different. The application filed under subsection (1) of section 11 is not dependent on the provisions of subsection (3). Nor is the ambit of the provision of subsection (1) of section 11 fettered by the provisions of section 11(4). The provisions of 11(3) and 11(4) cannot be read into the provisions of section 11(1) of the Act where the tenant prefers an application for fixation of standard rent without there being a demand for payment of rent or a suit for ejectment filed on the ground of default in payment of rent.

9. The only issue which now remains to be considered is whether the trial Court was right in invoking the provisions of section 151 r/w 94 of the Code of Civil Procedure and Order 39, Rule 10 to allow the landlord’s application. Section 151 provides that the inherent power of the Court to make such orders as may be necessary to meet the ends of justice or to prevent the abuse of the process of the Court are not affected by any other provisions in the Code. Interlocutory orders can be made by a Court under section 94 of the Code. Order 39 Rule 10 reads thus:

> 10. Deposit of money, etc., in Court.- Where the subject-matter of a suit is money or some other thing capable of delivery and any party

> thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Therefore, this provision empowers the Court to deposit of any money which may be admittedly due to another party.

10. On a conjoint reading of these provisions of law as well as section 11 of the Bombay Rent Act, in my view, when an application is filed by a tenant under section 11(1) of the Rent Act, the landlord is not entitled to interlocutory orders for deposit of any rent whether it be the contractual rent or the standard rent. Such an application filed under section 11(1) for fixation of standard rent must be decided without any interim orders being passed directing deposit or payment of any reasonable amount to the landlord. The legislature has provided for deposit of or payment of the amount of rent when an application is filed under 11(3) or 11(4). Therefore, the scope of section 11(1) cannot be widened by taking recourse to the provisions of section 151 r/w section 94 and Order 39 Rule 10 of the Code of Civil Procedure. This is not permissible in law and hence, the order must be set aside and is hereby set aside. The landlord, in my view, cannot obtain

orders for deposit of interim rent without either issuing a notice of demand under section 12(2) or instituting a suit for ejectment. The right to have such an amount fixed flows from the contingencies mentioned in sections 11(3) and 11(4). The impugned order is, therefore, set aside.

11. However, admittedly, the Petitioner has been continuing in possession of the premises without payment of any rent. This has naturally prejudiced the respondent. In my view, it would, therefore, be appropriate to direct the trial Court to decide the application for fixation of standard rent filed by the Petitioner within three months from today.

12. Writ Petition is disposed off accordingly.